IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL APPEAL No. 981 of 1995

For Approval and Signature:

HONOURABLE MR.JUSTICE MD SHAH

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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JETHALAL CHHAGANLAL VANKAR - Appellant(s)
Versus
STATE OF GUJARAT - Opponent(s)

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Appearance :
MR P R Abichandani for MS BHARGAVI G THAKAR for Appellant(s) : 1,
Mr LR Pujari, Addl.PUBLIC PROSECUTOR for Opponent(s) : 1,

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CORAM : HONOURABLE MR.JUSTICE MD SHAH

Date : 28/12/2007

ORAL JUDGMENT

1. This appeal is directed against the judgment and order dated 16.9.1995 passed by the learned Special

Judge, Mehsana, in Special (ACB) Case No. 2 of 1991 whereby the appellant-Jethalal Chhaganlal Vankar was convicted and sentenced to suffer rigorous imprisonment for one year and to pay a fine of Rs.500/-, in default, to undergo further simple imprisonment for six months for the offence punishable under section 7 of the Prevention of Corruption Act. No separate sentence is passed for the offence punishable under section 13 (1) and 13 (2) of the Prevention of Corruption Act. (for short, “the Act”). The muddamal currency notes were also ordered to be confiscated.

The facts necessary for disposal of the present appeal are briefly stated hereunder:

2. The accused-Jethalal Chhaganlal Vankar, was serving as Headmaster in a school of Village-Dingucha under Kalol Taluka and as such he was performing his duties as a public servant. It is the say of the complainant-Shambhubhai Lalbhai Patel that his elder brother Dashratbhai, who was residing at Hathijan, Ahmedabad with his family, died at Nadiad in the year 1985 during the communal riots. The deceased had two sons viz. Krunal and Anil who were studying in II and IV standard at Ahmedabad. After the death of

Dashratbhai, both the sons were required to be shifted to village Dingucha for their further studies and for that purpose, both the nephews of the complainant were to be admitted in Dingucha Primary School where the accused was serving as Headmaster.

3. It is the say of the complainant that on 28.9.1990 at about 11.00 a.m. he met the accused-Head master seeking admission for his two nephews. The complainant submitted school leaving certificates of his nephews and at that time, the accused refused to accept the school leaving certificates and demanded Rs.50/- each for the admission of the nephews i.e. Rs. 100/- in total. As the complainant did not want to give any bribe, he told the accused that he did not have money at that time and that he will bring the money next day and he rushed to the ACB office, Mehsana and filed complaint – Exh.30 with the ACB office. On receipt of the complaint, ACB Officer, P.I. Shri Valekar wrote Yadi to the Office Superintendent of the Civil Hospital, Mehsana and arranged for two government servants who were ready to act as panchas at ACB office. Accordingly panchas were called to the ACB office on 29.6.1990 after ascertaining their willingness to act as panchas. Similarly, the complainant was also instructed to go to

the ACB office on 29.6.1990. The complainant was told to bring the currency notes of Rs.100/- as demanded by the accused as bribe. The complainant accordingly, tendered two currency notes, each of the denomination of Rs.50/- to ACB Officer. The panchas were explained about the complaint by the ACB officer and the complainant and the panchas were introduced to each other. Anthracene powder was smeared on the currency notes brought by the complainant and it was tested under ultraviolet lamp and glowing marks of bluish powder were seen. The said currency notes were thereafter put into the left bush shirt pocket of the complainant. Preliminary panchnama was drawn to that effect at the ACB office and thereafter, P.I. of ACB Mr Puwar and Mr Valekar proceeded in a jeep to Village Dingucha at 9.a.m. and reached near Dingucha bus stand at 10.15. a.m. On instruction, panch No.1 Arvindkumar Pandya went to the house of the complainant and brought Anil and Krunal, the nephews of the complainant and proceeded towards the school where the accused was working as Head master. Panch No.1, the complainant and the two nephews of the complainant reached the office of the accused. On talking about the admissions, the accused took out two school leaving certificates which were given by the complainant on 28.6.1990. The accused entered name of Anil in the

register and instructed the complainant to go with Anil for admission in a particular class room. The complainant accordingly went with Anil and the class teacher entered name of Anil in muster roll and thereafter the leaving certificate of Anil was handed over to the complainant which was in turn, handed over to the accused. At that time, the accused told the complainant to meet him at 12 noon for admission of the second nephew Krunal as the class was to commence in the afternoon, and enquired whether the complainant had brought the money as demanded. The complainant replied in affirmative and took out the money with his left hand from the pocket and handed over it to the accused, who accepted it with his right hand and put the currency notes in the left pocket of his zabba. The complainant immediately went to the osari and signalled the ACB personnel, as already instructed. At that time, one person named Raghaji, came from outside and told the accused that police men in plain dress were moving outside the school. Thereupon the accused got up and went outside the office along with the said Raghaji. During that time, members of the ACB team came there and caught the accused red handed and the tainted currency notes were taken out from the pocket of zabba worn by the accused and thereafter panchnama was prepared. And necessary formalities such as experiment of

ultraviolet lamp was carried out and marks of anthracene powder were found inside the border of the pocket of the zabba worn by the accused as well as on the fingers and thumb of the right hand of the accused. The number of the currency notes on which anthracene powder was smeared which was written in preliminary panchnama was also found to be tallying with the number of currency notes recovered. Receipt was given to the accused with the signatures of raiding officer and the panchas and the second part of the panchnama was completed, and the muddamal currency notes were seized. Thereafter case of bribe was lodged against the accused, investigation was carried out, sanction was obtained and thereafter charge sheet was submitted by the ACB P.I. in the court for the alleged offence of corruption.

4. The learned Special Judge has framed charge Exh.9 for the above referred offences. The present appellant-accused pleaded not guilty to the charge and has claimed to be tried. To prove its case, the prosecution has examined the following witnesses:

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1. PW.1 Complainant-Shambhubhai Lalbhai Patel Exh.25
2. PW.2 Raghaji Lalaji Exh.26

3.	PW.3 Arvindkumar Pandya	Exh.27
4.	PW.4 Vasantrai Kishanbhai Valekar, P.I.	Exh,29

5. After recording the evidence of the prosecution witnesses was over, the learned Special Judge recorded the further statement of the appellant-accused under section 313 of the Criminal Procedure Code. The accused denied the allegations of the prosecution in toto and in his written submissions – Exh.34, it is submitted by the accused that on 28.6.1990, the complainant had gone to him for admission of his two nephews. The present accused asked the complainant to bring the two children and hence on the next day, the complainant went with his nephews for admission. It is also submitted that thereafter the accused made entry in the register and gave admission to one of the children-Anil and asked the complainant to get the name entered in the register and sent him to the class room. The accused further told the complainant that time of class of Krunal is 12 O'clock so he had to wait outside his office. At that time the complainant forcibly thrust the currency notes into the pocket of his zabba and tried to run away from his office. Therefore, he went after him putting his hand on the pocket uttering “Shambhubhai, Shambhubhai” During that time, when he reached upto the door of his office,

one Raghaji met him near the door and asked him about admission for his nephews. He was told to bring birth certificate with his nephews on the next day. At that time, police came there and brought him in his chamber. It is also the say of the accused that for admission he never demanded any money from the complainant as admission is easily available in his school. It is also his say that in his school one Atmaram Mohanlal Patel who is a senior teacher is a friend of the complainant. According to his case, in 1986, the complainant and the said Atmaram Patel succeeded in getting the accused transferred from Dingucha and he approached the High Court and accordingly the transfer order got cancelled. It is also submitted that again in the year 1988 Atmaram Patel and the complainant succeeded in getting the accused transferred from Dingucha but the accused approached the Government by filing representation and after considering the representation his transfer order was cancelled. It is also his say that as he is an outsider and he does not belong to the Dingucha village and Atmaram being a local man, who wanted to become Principal of the said School false cases were filed against him. In fact, later on the said Atmaram was appointed as Principal in the said school. That Panch, Arvindbhai Pandya gave a false deposition under the

influence of Shambhubhai as Arvindbhai is also a friend of the complainant. He also stated that he has not committed any offence.

6. I have gone through the defence version and gone through the relevant records. It is clearly established that tainted currency notes were found from the possession of the accused. But as per the defence of the accused it was forcibly put into the pocket of the accused.

I have heard the learned advocate for the appellant and the learned APP for the State.

7. Mr P.R. Abichandani, learned advocate vehemently argued that as per the evidence of the complainant-Shambhubhai, as the accused demanded Rs.50/- each for admission of his nephews and as he was not willing to pay the said amount, he approached the ACB office where one Mr Puwar was present and before him he lodged complaint and P.I., Mr Puwar recorded the complaint and thereupon panchas were called and in presence of panchas, necessary formalities of experiment of ultra-violet lamp was carried out and preliminary panchnama was prepared and the trap was arranged by Mr

Puwar and investigation was also carried out by him. While, as per the deposition of the Investigating Officer Mr V.K. Valekar, PW 4, the complaint was recorded by him and total investigation was also carried out by him and Mr Puwar has not taken any part in the investigation. So, according to him, it shows that the complainant is lying and on the basis of deposition of such kind of witnesses, conviction cannot be imposed on the accused. In light of this submission, if we discuss the evidence in detail, it is very clear that as per the evidence of the accused, he had admitted that the complainant-Shambhubhai, PW 1, had gone to him with two school leaving certificates of his nephews and requested for admission and forcibly the tainted currency notes were put into the pocket of the zabba of the accused. Taking into consideration this defence, it would not be very important as to who recorded the complaint and who carried out the investigation. So the accused himself admitted that the complainant had gone to him and forcibly put two tainted currency notes into his pocket, then in that case, by giving wrong name of Investigating Officer, the total evidence of the complainant could not be discarded. It is also pertinent to note that in the cross-examination of PW 4, the Investigating Officer, Mr Valekar stated on oath that first of all the complainant

went to Mr Puwar and thereafter Mr Puwar called this witness and told that the complainant had come in the chamber of Mr Puwar and thereafter he recorded the complaint and investigation was carried out. In cross-examination, this witness specifically denied that Mr Puwar recorded the complaint. So, from the cross examination of this witness, it has come out that the complainant met Mr Puwar first in his chamber and this witness Mr Valekar called him in his chamber and in his presence, he recorded his complaint. Thus, it is quite natural that the complainant met Mr Puwar and then he might have given name of Mr Puwar as having recorded the complaint. In the above circumstances, there is no substance in the arguments advanced by Mr Abichandani that as the complainant had given name of Mr Puwar as Investigating Officer, evidence of the complainant should be discarded.

8. It is argued by Mr Abichandani that PW 1, the complainant stated on oath in his cross examination that he and Atmaram Patel made efforts jointly and managed the transfer of the accused from his village. Learned advocate has given emphasis and much weightage on this particular sentence of the evidence of the complainant and submitted that the defence of the accused is probable

that the complainant, at the instance of Atmaram Patel, has lodged false complaint against the present accused to remove him from the service so that Atmaram could become Principal in the School. But if we go through the entire evidence of the complainant, it is specifically stated on oath by the complainant in his cross examination that it is not true that he and Atmaram had good relation. The complainant specifically stated on oath in his cross examination that the accused approached the High Court and the Government had withdrawn the order of transfer of the accused. He also denied that he and Atmaram, a senior teacher managed to transfer the accused and as the accused made representation before the Government, the Government cancelled the transfer order. He further specifically denied that at the instance of Atmaram, he got up false case against the appellant-accused. He also stated on oath that he is not aware that the accused was due to retire in 1995. It is to be noted that lengthy cross examination is carried out by the advocate of the accused and so merely because it is stated in one sentence that 'the complainant and Atmaram succeeded in getting transfer of the accused', much weightage should not be given on that particular sentence.

9. Learned APP, argued that though there was a

contradiction in giving the name of the writer of the complaint, the deposition and evidence given by the complainant and the panch witnesses clearly proved the case against the appellant-accused. It is submitted by him that the complainant has no grudge against the accused and there is no reason to file a false complaint of bribe against the accused, and there is no enmity between the accused and the complainant. So far as the demand of bribe is concerned, he submitted that the evidence of the complainant gets corroboration through the evidence of independent panch Arvindkumar in whose presence the accused has demanded the amount of bribe and accepted the amount. He also submitted that the muddamal currency notes were seized from the pocket of the accused in presence of the panchas. Thus, according to the learned APP, the prosecution has proved beyond reasonable doubt the case of demand and acceptance of the amount of bribe and the learned Special Judge has rightly held the appellant-accused guilty and convicted and, therefore, the appeal deserves to be dismissed.

10. As discussed above and as this court has gone through the entire evidence of the complainant, it is found that there is no reason for the complainant to file false complaint against the present appellant-accused.

It is also to be noted that at the relevant time, the complainant was working as labour contractor in Nirma Washing Powder company and he has studied upto F.Y.B.Com. The fact that the elder brother of the complainant who was residing at Hathijan, Ahmedabad had passed away in the year 1985, was also not denied by the present accused.

11. As per the evidence of PW 1, the complainant, sons of his deceased brother Krunal and Anil had passed third standard and first standard respectively. So both of them were brought to Dingucha at his residence for admission in school and he approached the present appellant-accused. In the complaint which is produced at Exh.30 in which it is narrated that as his Bhabhi (wife of his deceased brother) was serving at Ahmedabad, both Krunal and Anil were brought to Dingucha for studying. It is also pertinent to note that during the trap, School Leaving Certificates were found from the chamber of the accused which also suggests that the complainant went on the previous day with school leaving certificates of both his nephews for admission and were handed over to the Principal of the school (accused). After giving admission, presence of the students are not necessary when the school leaving certificates were produced by the

complainant before the accused, who was Principal at the relevant time. If there is vacancy in the class and if admission is easily available, the accused could very well give admission to both the students-Krunal and Anil, nephews of the complainant, and that day the accused would not have asked the complainant to meet him on the next day with Krunal and Anil. From the above facts, it can be said that only with a motive to get bribe amount, admission to the nephews of the complainant were not given on the first day, and on the next day the complainant was called along with the students. (of course, with the bribe amount). On the next day, he accepted the bribe amount from the complainant and was caught red handed by the ACB team.

12. As discussed above, the complainant is a labour contractor, who has studied upto F.Y.B.Com and after the death of his brother, the two sons of his brother were brought to Dingucha for getting admission in school. Even if it is assumed that the complainant has any grudge or enmity with the accused, he could have made efforts to trap the accused in false case earlier but till 1990, he did not make any effort to trap the present appellant in a false case. Similarly, if the complainant had good relations with Atmaram Patel, then

it could be presumed that he became tool of Atmaram and Atmaram instigated the complainant to file the complaint with a view to see that Atmaram becomes Principal of the school.

13. PW 2, Raghaji, in his evidence stated that he had gone to the aforesaid school for the purpose of getting admission to children of his brother who is handicapped. At that time, the complainant-Shambhubhai was coming out of the office of the Principal. The Headmaster came out of the office shouting “Shambhu, Shambhu”. He asked the accused about the admission to his nephew and niece. He was told to come on the next day with the birth certificate of the children. During this time the police personnel entered and the accused was arrested. He further stated that he was not aware of the reason why the accused was arrested and the police has not taken his statement also. This witness has turned hostile and there were contradictions in his evidence and in his cross-examination.

14. PW 3, Arvind Pandya, panch No.1 (Exh.27), supported the version narrated by the complainant in his evidence and he has specifically stated on oath that after giving admission to one of the nephews Anil, the

accused told the complainant that as class of Std. IV was going to start at 12 noon, work of the complainant will be completed and at that time the accused also asked the complainant whether as per the discussion that took place between the complainant and the accused on the previous day, the complainant brought the amount, and on saying so, the complainant had handed over the two currency notes to the accused and the accused accepted it with the right hand and put it into the left pocket of the zabba worn by the accused. As per the evidence of this witness, thereafter, the complainant went outside the office of the accused and gave signal and at that time, one person (Raghaji) from outside, came into the office of the Principal and told the accused that outside the office policemen in plain dress were moving here and there. Thereupon the accused stood up and along with the said Raghaji, went out from the office. During that time, members of the ACB team came there and caught him red handed. Nothing has come out during his cross-examination which created doubt about his testimony before the court. This witness is an independent witness and there is no reason to disbelieve him. This witness also supported the case of the prosecution as well as the evidence of the complainant. The panchnama which is produced at Exh.28 also supported the evidence of the

complainant as well as the evidence of PW 3, the panch witness. So, in light of this evidence, it is very difficult to believe that the complainant became tool of Atmaram and got up false case against the present appellant-accused. It is also not believable that the complainant forcibly thrust the tainted currency notes into the pocket of the *zabba* worn by the accused. It is also to be noted that anthracene powder marks were found on the inside border of the pocket of the zabba worn by the accused at the time of trap but no anthracene powder marks were found outside the pocket. Anthracene powder marks were found on the fingers and thumb of the right hand of the accused. So the defence put forward by the accused that as he kept his hand outside portion of the pocket, the marks of anthracene powder was found on the fingers could not be believed at all. Hence, as per the evidence of PW 1, the complainant and panch witness, PW 3, the accused demanded the bribe amount from the complainant, accepted it by his right hand and put the tainted currency notes in the pocket of his zabba. In this case, the prosecution has proved its case beyond reasonable doubt that the accused had demanded and accepted the bribe amount and was caught red handed.

15. As discussed above, the defence put forwarded

by the accused is not believable and when the accused himself admitted that he was caught red handed with the tainted currency notes, the contradiction in giving the name of the writer of the complaint in the deposition of the complainant and other witnesses is not of much significance. When the facts of demand, acceptance and recovery have been satisfactorily established beyond any reasonable doubt, the prosecution has become statutorily entitled to the benefit of the presumption under section 20 (1) of the Act i.e. the prosecution has to be held to have proved that the appellant-accused accepted the money in question as illegal gratification. From the oral evidence of panchas, Investigating Officer, panchnama and FIR the fact that the appellant-accused demanded and accepted illegal gratification stands fortified and strengthened. So far as the contention regarding major contradictions in the evidence of the complainant, on a careful scrutiny of the evidence of the complainant, it reveals that there is of course, at one place, he has mentioned name of the Investigating Officer wrongly, but looking to the circumstances and facts of the case, this contradiction becomes immaterial because the defence has put up the case of forcibly thrusting the tainted currency notes in the pocket of the accused. In this case, who has written the complaint is

also not material. Thus, it is found that there was sufficient evidence on the record of the trial court to hold that the appellant did demand and accept the bribe money from the complainant. Even if the money was thrust in the pocket of the appellant-accused, the presence of anthracene powder on the hands of the appellant-accused could not have been explained. The burden is on the appellant-accused to prove that the money in question recovered from him is not by way of illegal gratification. Once the prosecution evidence is found to be acceptable and reliable and once it is found that it inspires confidence, then there is no option for this court but to dismiss the appeal. I am fortified in my view by the judgment rendered in the following decisions:

(i) M. Narsinga Rao v. State of Andhra Pradesh (2001 (1) Crimes 79 SC) (paras 12 and 13)

(ii) State C.F., A.P. v. Kommaraju Gopala Krishna Murthy (2000) 9 SCC 752)

16. In the result, this appeal is dismissed. The judgment and order of conviction and sentence recorded in Special (ACB) Case No.2 of 1991 dated 16.9.1995 by the Special Judge, Mehsana are hereby confirmed. The appellant-accused shall surrender to the custody within

eight weeks from the date of receipt of the writ of this judgment. His bail bonds are cancelled.

[M.D. SHAH, J.]

msp